

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 5010 of 2003(A)

C.R.NO.96/2003 OF AMARAVILA EXCISE RANGE, THIRUVANANTHAPURAM
OP.25798/2002 Dated 16/07/2003 OF THIS COURT.

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PETITIONER: ACCUSED NOS.1 AND 2

1. ASHOK KUMAR S/O. CHELLAPPA PANICKER,
KULATHINKARA HOUSE, VENKODU, CHERIYAKOLLA DESOM,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT.
2. RAMACHANDRAN NAIR S/O. SEKHARAN NAIR,
LAKSHMIMANGALATHU HOUSE, NEMOM, EDAKKADU DESOM,
PALlichal VILLAGE, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

1. STATE REPRESENTED BY THE EXCISE
INSPECTOR, AMARAVILA EXCISE RANGE,
THIRUVANANTHAPURAM DISTRICT REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. THE ASST.EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R. UDAYABHANU, J.

CRL. M.C. NO.5010 of 2003

Dated 23RD day of November, 2006

ORDER

The petitioners are the accused in C.R.No.96/2003 of Amaravila excise range, Thiruvananthapuram with respect to the offence under section 57(a) of the Abkari Act on the allegation that samples of toddy taken from the shop of which the 2nd petitioner is the licensee, was found to contain 12.46% by volume of ethyl alcohol. It is the case of the petitioners that in view of the decision of the Division Bench of this Court in **State of Kerala v. Unni** (2005(1)KLT 714), offence under section 57 (a) will not lie in case the sample was found to contain ethyl alcohol in excess of the prescribed percentage i.e., 8.1% vide section 9(2) of the Kerala Abkari Shops (Disposal in Auction) Rules, 2002. In the above cited decision, this Court held that only offence under section 56(b) against the petitioners will lie.

2. In the circumstances, and in view of the decision in **State of Kerala v. Unni**(cited supra) the charge under section 57(a) cannot be sustained. Hence, the proceedings in

C.R.No.96/2003 of Amaravila excise range, Thiruvananthapuram is herewith quashed with liberty to the authorities to proceed against the petitioners/accused under section 56(b) of the Abkari Act.

The Crl.M.C.is disposed of as above.

K.R.UDAYABHANU, JUDGE.

kvm/-